

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 37293 of 2007()

LAR.128/2003 of ADDL.SUB COURT,KOLLAM
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PETITIONER:

SYAMALA, W/O GOPINATHAN NAIR,
KALLETHARA KIZHAKKATHIL,
KALLELIBHAGOM.

BY ADV. SRI..SIJU KAMALASANAN
SRI.PRATHEESH.P

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, KOLLAM.

BY GOVT. PLEADER SMT. R. BINDU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.37293 OF 2007

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Dated this the 17th day of December 2007

JUDGMENT

This writ petition is filed for a direction to the Addl.Sub Court, Kollam to restore LAR No.128 of 2003 and dispose it of in accordance with law. Ext.P1 would reveal that on 16.11.2004 due to the absence of the claimant the court below confirmed the award of the Land Acquisition Officer. Against that an application for review was filed with delay and it also met with the same fate. It is contended by the learned counsel that the reference court has no jurisdiction to refuse answering the reference properly. The Apex Court as well as this Court in many decisions have held that a reference cannot be dismissed for default. This Court has also held that even if the claimant is absent, there is a duty cast upon the court to consider the materials available on record and pass an appropriate award. It has not been done in this case. It is true that there is negligence on the part of the claimant, but it shall not defeat substantial justice.

Therefore I direct the court below to restore LAR No.128 of 2003 and dispose it of in accordance with law after affording equal opportunities to

both sides. I also make it clear that as there has been default on the part of the claimant, the question of awarding interest from the date of answering the reference till today may also be considered by the court below and if there is negligence interest may be refused for the said period. Parties are directed to appear before the court below on 18.1.2008.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-